

1900-027 Chancery Causes: Dickson S. Litton vs. A. J. Litton &c
Lee Co.

Loyd, Cook, Russell, Baumgardner, Noel, Yeary

CA-Estate Dispute
T-Property

To the Honorable W.T. Miller Judge of Circuit Court
of Lee county Virginia

Humbly complaining your Orator, Dickson S. Litton, will respectfully show to your Honor, that about the year 1842, he purchased from his father Alexander Litton, a tract of land situated on Powell's river in the County of Lee and about eight miles East of the Court House, containing two hundred acres, and locally known in the neighborhood as the "Koger Mill Tract", it being the same tract of land conveyed by Henry S. Kane to the said Alexander Litton, by deed bearing date on the ___ day of _____ 18___, a copy of which deed is here filed marked "A" and prayed to be treated as a part of this bill. The price which your Orator paid for said land, as he now remembers, was seven hundred dollars, one hundred dollars of which he paid down, in the price of two horses then delivered to the said Alexander Litton, the residue was divided into three equal installment of two hundred dollars each and notes given for the same, payable in one, two and three years from date. Possession of this tract of land was at once given to your Orator, and in the year 1845, after his marriage, he moved on to said land and remained there a number of years.

Your Orator will now show your Honor that he paid the purchase price of said land as the several notes aforesaid became due, and had completed said payments in full when he moved upon said land in the year 1845

Your Orator will now show your Honor that the said land remained on the land books of said county, in the name of Alexander Litton till the year 185___ when it was charged to your Orator, and transferred from the said Alexander Litton, but your Orator paid the taxes upon said land from the date of his purchase up to the time of said transfer and from thence to the present time. He will further show your honor that he has been in the uninterrupted, open and notorious possession of said land from the date of his purchase down to the present time.

Your Orator will now show your Honor that he has made valuable improvements upon said land, by clearing it up, fencing it and building upon it. In the year 185___ he built a good mill upon it, this mill was washed away by the big freshet of 1862, and thereafter, about the year 1866, he built upon said land a fine flouring mill, which was for many years, perhaps, the best mill in the county of Lee.

Your Orator will now show your Honor, that notwithstanding the fact that he paid for this tract of land before the year 1845, he obtained no deed to it, he and his father lived close together, and both neglected the matter, but about the year 1859, he had a deed prepared and gave it to his father to be executed, but he neglected to do it and the matter passed out of your Orators mind with the cares and perplexities of the war, and he thought no more about until some two or three years ago, when he was preparing to convey said landz along with another adjoining tract to his daughter Margaret Zion when the fact was discovered that no deed had in fact been executed, the said Alexander Litton was then dead, he having departed this life some 12 or 14 years ago, leaving surviving him the following named children his heirs at law, to wit, your Orator Dickson S. Litton, Harvey D. Litton, Wilson V. Litton, Elihu V. Litton, A. J. Litton Rebecca Loyd, Nee Litton, widow of Alfred Loyd deceased and Mary Russell nee Litton widow of Alfred Russell deceased, and also widow of Levi Pennington deceased, whom she had married after the death of the said Russell. The said Harvey D. Litton is now dead leaving the following children his heirs at law, to wit, Charles L. Litton, Samuel L. Litton, Perry L. Litton, Callie D. Litton who intermarried with J. Morgan Couk, Emmett L. Litton, Nannie B. Litton who intermarried with _____, William Litton and Judson Litton, the two last named being infants under 21 years of age, and a widow Nancy Litton, all of whom are residents of the state of Texas. The said Mary Russell or Pennington is now also dead, leaving the following children her heirs at law, to wit, A. L. Russell, D. H. Russell, C. A. Russell, H. J. Russell, G. W. Russell, Lizzie Russel who intermarried with F. P. Baumgardner and Emily J. Russell who intermarried with James Baumgardner, the said Emily J. Baumgardner and James Baumgardner her husband are non residents of the state of Virginia, the said H. J. Russell is now dead, leaving the following children his heirs at law, to wit, Bernice, Kitty, Bernard and Pearl D. Russell, all of whom are infants under the age of 21 years, the said H. J. Russell also left a widow, Eva Russell.

Your Orator will now show your Honor that as soon as he discovered the fact that he had no deed from his father for said land he had a deed prepared and presented it to his brothers and sisters for execution by

them. All of his said brothers and sisters who were then residing in this state, signed, executed and delivered as their deed. The brothers and sisters thus executing it were A.J. Litton, Wilson V. Litton, Elihu V. Litton, Mary Russell or Pennington and Rebecca Loyd. At that time Harvey Litton, the other heir of the said Alexander Litton was dead, and his widow and children resided in Texas, to which place your Orator sent said deed, signed and acknowledged as aforesaid by his other brothers and sisters, to the children and heirs of the said Harvey D. to be executed by them, but for some reason they refused to execute it, and also neglected to return it to him, when last September it was burned up and destroyed in an accidental fire which destroyed the dwelling house of the said Charles Litton, as he is informed by a recent letter from the said Charles

Now the object of this bill is to compel ~~and~~ the conveyance of said tract of land to your Orator by his brothers and sisters and their descendants, to compel the conveyance by the said children and heirs of the said Harvey Litton, who have up to this time refused to convey, to have the other brothers and sisters who have heretofore conveyed but whose deed has been destroyed to reconvey or if this is not in accordance with equity practice, then to set up and establish said lost or destroyed deed, and being without adequate remedy at law he prays your honor's court of chancery to take cognizance of his cause and grant him proper relief, to this end he prays that A.J. Litton, Wilson V. Litton, Elihu V. Litton, Rebecca Loyd, Nancy Litton widow of Harvey D. Litton deceased, Charles L. Litton, Samuel L. Litton, Perry E. Litton, Callie D. Couk and J. Morgan Couk her husband, Nannie B. _____ and _____ her husband William Litton and Judson Litton children and heirs at law of the said Harvey Litton deceased, A.L. Russell, D.H. Russell, C.A. Russell, G.W. Russell, Lizzie Baumgardner and F.P. Baumgardner her husband, Emily J. Baumgardner and James Baumgardner her husband, Berhice Russell, Kitty Russell, Bernhard Russell, Pearl D. Russell children and heirs at law of H.J. Russell deceased and Eva Russell his widow be made the parties defendant to this bill, that they be required to answer the same, but they need not do so on oath as that is waived, that upon a final hearing of this ^a case that the heirs of Alexander Litton deceased be compelled to convey by proper deed said tract of land to your Orator or if it be

improper to compel conveyance upon the part of those who executed and delivered the lost or burned deed, then that said deed be set up and established by the proper orders and decrees of your honors court, that order of publication be made against the nonresident defendants and guardian ad litem be appointed to defend the rights of the infants, And he prays for full general relief. May Spa. issue &c.

Dickson S. Litton by Counsel

C. T. Duncan P.Q.

Dickson & Little
vs. 3 Bill In chey
A. J. Little et al

1899 1st Sept rules bill filed
Spa executed on home
Defts & O.P. for non-residents
& Decree nisi
" 2nd Sept rules Answer
of Guard ad litem filed
& O.P. Complete D.C.
Conf'd & Cause set for
hearing.

November Term 1900
Decree final Chey O.P.

No 6 Page 445

Plffs costs

Clerk	9.26
Sheriff	8.00
G. A. L.	5.00
Printer	6.00
atty	15.00
N.P.	5.25

\$48.51

To the Honorable W.T.Mille, Judge of the Circuit

Court for Lee County, Virginia:

The joint and separate answer of William Litton, Judson Litton, Bernice Russell, Kitty Russell, Bernard Russell and Pearl D.Russell infants under the age of twenty-one years by Geo.P.Cridlin their Guardian ad litem, assigned to defend them in this suit, to a bill of complaint exhibited against them and others, in the Circuit Court for the County of Lee, by Dickson S.Litton.

The respondents reserving to themselves the benefit of all just exceptions to said bill, for answer thereto, or to so much thereof as they are advised that it is material they should answer, by their said Guardian ad litem answer and say:-

That they are infants of tender years, and by reason of their infancy, are incapable of understanding, or of taking care of their rights and interests. They therefore, by their said Guardian ad litem, commend themselves and their rights and interests to the protection of the Court, and pray that no decree may be pronounced which will tend to their prejudice.

And having fully answered, the said respondents pray to be hence dismissed with their reasonable costs in this behalf expended, and they will ever pray &c.

Geo. P. Cridlin Guardian ad litem
for William Litton, Judson Litton, Bernice Russell, Kitty Russell, Bernard Russell and Pearl D.Russell.

State of Virginia)
(to-wit:
County of Lee)

This day personally appeared before me L.T.Hyatt, a Commissioner in Chancery for the Circuit Court of the County of Lee, state of Virginia, Geo.P.Cridlin Guardian ad litem for William Litton, Judson Litton, Bernice Russell, Kitty Russell, Bernard Russell and Pearl D. Russell, whose answer is above written, and made oath that the state-

ments contained in the said answer, so far as made of his own knowledge, are true; and so far as made from knowledge or information derived from others, he believes to be true.

Given under my hand this 20 day of Sept., 1899.

L. S. Hyatt,

Commissioner in Chancery.

Dickson S. Litton
vs. { answer of
Guardian ad litem
A. J. Litton et al.

Filed September the 20th
1899.

A. B. Munsey Clerk

Given under my hand this _____ day of _____ 1899.
I, the undersigned, do hereby certify that the foregoing is a true and correct copy of the original as the same appears from the records of the Court.

Court of Probate in Chancery.

To the Honorable H. A. W. Skeen Judge
of the Circuit Court for Lee County
Virginia;

The deponents and answer
of Charles L. Litton, Samuel
L. Litton, Perry Litton, Callie
D. Litton, and J. Morgan Leake her husband
D. Leake, Emmett L. Litton, and
Nannie B. - formerly Litton,
to a bill in Equity filed
in said Court by Dixon S.
Litton against them and others,
Respondents say said bill
is not sufficient in Law,
Further answering respondents
say that their father moved
from the State of Virginia to
the State of Texas ^{some} ~~many~~ years
ago, and that respondents have
resided in Texas since that
time and know but little
about the matters stated in
said bill, but respondents do
not believe it is true that said
D. S. Litton in 1842, or at any
other time purchased from
his father the land in the bill
mentioned, do not believe that
he paid therefor the sum of \$700⁰⁰
or any other sum, and respondents
deny these allegations and call
for proof thereof.
It is true that said D. S. Litton

went into the possession of said land many years ago, and has been in the possession thereof ever since, but respondents are not informed of the exact time he went into possession thereof, and call for proof of the same.

It is true that said D. S. Litton has paid the taxes on said land for a number of years, but respondents do not know the exact time he commenced paying said taxes, ~~as~~ ^{what} for years he paid the same, and demands proof of the allegations of said bill in reference to said taxes.

It is true that said D. S. Litton has made a number of improvements on said land, but as to the kind of improvements and the value thereof, respondents are not informed, and call for proof of same.

It is true that the said Alexander Litton the father of the said D. S. Litton never made to him a deed for said land and likewise true that the said

D. S. Litten recently proposed a
deed for said land to himself
and sought to have the heirs
of said Alexander ^{Ritten} execute
the same, and true that some
of said heirs did execute
said deed, but respondents
do not remember which of
said heirs executed said
deed, and call for proof
thereof.

It is also true ~~that~~ ^{as} respondents
believe that said deed was
destroyed by fire as stated in the
bill.

It is also true that the said Alexander
Ritten died as stated in the bill
and the bill correctly sets
forth ^{the} heirs of the said Alexander
Ritten as respondents are in-
formed and believe.

Further answering respondents say
that when the said D. S. Litten sent
said deed to respondents with the
request ~~to the~~ that they execute the
same he made an entirely dif-
ferent claim as to the manner
in which he derived title to the
said land from that now
set forth in said bill, and
respondents believe and charge

That said D. S. Litton originally
entered upon said land
not in his own right, but
under and by permission
of the said Alexander Litton
and simply as his tenant
at will, and that ~~after~~ ^{that}
he so continued to hold the
said land until the death of
the said Alexander Litton
and that thereafter he continued
to hold the same for the
benefit of all the heirs of the
said Alexander Litton
and in privacy with them
as a co-porcener.

Wherefore having fully
answered, respondents
pray to be hence dismissed
with their costs &c.

Bullitt & Kelly,
B. H. Smalley,
Atty for Respondents.

Charles L. Litchman
Ado { Sumner
Sumner.
Wm. S. Litchman

Dickson S.Litton

Vs.

A.J.Litton and others.

This cause came on this day to be further heard upon the papers formerly read in the cause, and the report of C.T.Duncan, Special Commissioner this day filed, with deed accompanying the same:and was argued by counsel, and there being no exceptions to said report, and said deed being seen and inspected by the Court, said report and deed are each confirmed; and the Clerk of this Court will deliver said deed to the said Dickson S.Litton upon his calling for the same. And there remaing nothing further to be done in this cause, it is stricken from the docket.

Dickson S. Litton

vs. }

Final Decree.

A.J. Litton et al.

Entered on lchy
WB. Nov. P. 445-

Enter this decree

A. C. W. Sherr

Nov. 13th, 1900.

Dickson S.Litton

Vs.

A.J.Litton et al.

This cause came on this day to be heard upon the bill of the Complainant, the demurrer and answer of Charles L.Litton, Smauel Litton, Perry Litton, Callie D.Couk and J.Morgan Courk, her husband, and Nannie B. _____ formerly Nannie B. Litton, and general replication to said answer and joinder in said demurrer, the answer of William Litton, Judson Litton, Bernice Russell, Kitty Russell, Bernard Russell and Pearl D.Russell by Geo.P.Cridlin their guardian ad litem and general replication to said answer, and was argued by counsel: and it appearing to the Court that process had been duly executed by personal service on A.J.Litton, Wilson V.Litton, Elihu V.Litton, Rebecca Loyd Alexander L.Russell, Dickson H.Russell, George W.Russell, Charles A. Russell, Elizabeth Baumgardner, nee Russell, and F.P.Baumgardner her husband, and one Eva Russell widow of H.J.Russell deceased; and that order of publication has been duly made, posted, published and completed against Emily J.Baumgardner, nee Russell, and James Baumgardner her husband, all of whom are adults, and that they had each failed to appear, answer, plead or demur to said bill; On consideration of which said bill is taken for confessed against them; and it appearing to the Court from the depositions of witnesses that the Complainant Dickson S.Litton purchased the tract of land in the bill and proceedings in this cause mentioned from his father Alexander Litton deceased in the year 1842, and that he has fully paid for the same and has held the undisputed and uninterrupted possession of said tract of land from that time down to the present, but that he obtained no deed for the same from the said Alexander Litton: On consideration of all of which it is adjudged ordered and decreed that C.T.Duncan, who is appointed a special Commissioner for the purpose, do convey to the said Dickson S.Litton said tract of land by deed with covenants of Special Warranty as to himself but to operate as a deed of general warranty in so far as the defendants who are the heirs at law of Alexander Litton deceased are concerned; And it further appearing to the Court that A.J.Litton, Wilson V.Litton, Elihu V.Litton, Rebecca Loyd and Polly Russell the mother of A.L.Russell, D.H.Russell, George W.Russell, Charles A.Russell

Emily J. Baumgardner, Elizabeth Baumgardner and H.J. Russell deceased executed and delivered to D.S. Litton a deed for their undivided interest in said land, and that they are in no default, no costs are decreed against them or the heirs of the said H.J. Russell deceased. And it is further adjudged, ordered and decreed that the plaintiff recover against Charles L. Litton, Samuel L. Litton, Perry Litton, Emmet L. Litton Called D. Couk, nee Litton, and Nannie B. _____, nee Litton adult heirs of Harvey D. Litton deceased, the costs incurred by him in the prosecution of this suit to be taxed by the Clrk. x And this cause is continued to a future day of this court.

Dickson S. Litton,

vs.) Decree.

A. J. Litton et al.

Entered A.D. 66 P. 434-5.

Enter this decree

Nov. 8 1900.

Dickson S.Litton

Vs.

A.J.Litton and others.

On motion of the defendants, Charles L.Litton, Samuel J.Litton Perry Litton, Callie D.Couk and J.Morgan Couk, her husband, Ermet L. Litton and Nannie B. _____ formerly Nannie B.Litton, leave was granted them to file their answer in said cause which was accordingly done, to which answer the plaintiff replied generally. And the cause is continued.

Dickson S. Litton

75 $\frac{1}{2}$ Dues

A. J. Litton & also

Entered on Chy. O.B.
No. 6 Page 305.

Enter this dues
H or W Sherr
Nov 13th 1899

The deposition of J.C.Noel, taken before, C.E.Couk, Notary public, for Lee County in the State of Virginia, by agreement, at the office of C.T.Duncan in the town of Jonesville to be read as evidence on behalf of the defendant in a suit now pending in the Circuit court of Lee County on the Chancery side thereof in which D.S.Litton is plaintiff and A.J.Litton and others are defendants.

J.C.Noel a witness of lawful age being duly sworn deposes and says:

Q.1.-- Please state if a few years ago you took the acknowledgement of a deed from certain of the heirs of Alexander Litton deceased, to Dickson S.Litton of a tract of land situated in this County and known as the Mill or Koger tract and if you answer that you did please state which ones of said heirs executed and acknowledged said deed.

A.-- I did. A.J.Litton and wife, W.V.Litton and wife, E.V.Litton , Polly Russell, Rebecca Loyd all signed and acknowledged said deed before me, then a justice of the peace of said County. It was either in the Summer of 1894 or 1895, early in the Summer. I delivered said deed after it was acknowledged to D.S.Litton.

And further this deponent saith not.

J.C.Noel

Virginia, Lee County, to-wit:

I, C.E.Couk, notary public for the County of Lee and state of Virginia, do certify that the foregoing deposition of J.C.Noel was taken sworn to and subscribed before me, for the purposes and at the time and place in the caption mentioned, in my county and state aforesaid. Given under my hand this the 22nd day of October, 1900.

C.E.Couk N.P.

Notary fee .75¢

D. S. Lutton

vs. ~~3~~ Debs.

A. J. Lutton et al

Received and filed

Oct 22. 1900.

filed October 22nd 1900

A. B. Munsey Clerk

N. P. fee 75-

The depositions of W.J.Yeary, W.V.Litton, Elihu V.Litton, *D.S.*
Litton & Rebecca Loyd., taken at the dwelling house of
M.F.Litton, on the 31st of May 1900, before V.H.Kelly a notary public,
by agreement, which depositions are intended to read as evidence in *be -*
half of the Plaintiff in
a chancery cause now pending in the Circuit Court of Lee County, in
which D.S.Litton is plaintiff and A.J.Litton and others are defendants.

Present, C.T.Duncan counsel for the plaintiff and B.H.Sewell counsel
for the defendants, heirs of Harvey D.Litton deceased, as shown by the
answer filed in said cause.

E.V.Litton, a witness of lawful age being first duly sworn deposes
and says:

Q.1.-- What relation are you to the plaintiff D.S.Litton and to Alexander ~~Ex~~ Litton deceased?

A.-- I am a brother of D.S.Litton and a son of Alexander Litton deceased.

Qb3.-- To the introduction of this witness the heirs of Harvey Litton
object, because it is shown that is a son of one of the parties to the
contract which is the subject matter of investigation in this case,
and the said Alexander Litton being dead.

B.H.Sewell,

Q.2.-- Are you acquainted with the tract of land known as the "Mill
tract" of D.S.Litton and also known ~~and~~ as the Koger or Kamm tract, if
so how long have you known it?

A.-- I am acquainted with said tract of land and have known it all my
life, and I am now 66 years old.

Q.3-- In whose possession has that land been for the last several
years?

A.-- It has been in the possession of D.S.Litton ever since I can
remember.

Q.4.-- How long has your father Alexander Litton, been dead?

A.-- My best recollection is that he died in the year 1884, though as
to this I might be mistaken a year or two.

Q.5.-- Where did your father live at the time he died and how long
had he been living there?

A.-- He lived on his old home farm, where I now live, which farm is about one-fourth of a mile from said "Mill or Koger tract of land.

Q.6.-- Since you have known said Koger or Mill tract of land who has claimed it?

A.-- D.S.Litton.

Q.7.-- Did you ever hear your father Alexander Litton set up claim to said land or did you ever hear him say anything about D.S.Litton being the owner of it?

A.-- I never heard my father set up any claim to said land, and I don't remember that I ever heard him say anything about the ownership of it by D.S.Litton, it was always understood to and treated as the land of D.S.Litton.

Q.8.-- After the death of your father how much money was paid to D.S. Litton, if any, by the estate of Alexander Litton deceased?

Objt. Objected to because immaterial.

B.H.Sewell.

A.-- My recollection is between \$70.00 and \$80.00.

Q.9.-- After you purchased your land from your father, how much if any thing did you pay for your father to D.S.Litton?

Obj.-- Objected to because irrelevant and immaterial.

B.H.Sewell.

A.-- I did not pay him anything myself, but paid the money to my father ~~and~~ he paid \$100.00 each to ~~the~~ his children, D.S.Litton being one.

Q.10.-- Please state if since your father's death you and your other brothers and sisters except the heirs of Harvey D.Litton deceased, did not make a deed conveying said Mill tract of land to the said D.S.Litton?

Objt. Objected to because the deed if made is the best evidence and should be produced.

A.-- I signed and acknowledged such a deed, and my understanding is that all the balance except the heirs of H.D.Litton deceased signed and acknowledged said deed.

Obj.-- That part of the forgoing answer which relates to his under-

standing as to what the others^{did} with regard to signing said deed, is objected to because witness must state his own knowledge of matters about which he testifies.

B.H.Sewell.

And further this deponent saith not.

E. V. Litton

Wilson V.Litton another witness of lawful age being duly sworn deposes and says:

Q.1-- Please state your age, occupation and place of residence.

A.-- I am 72 years old, am a farmer, and reside on a tract of land which adjoins the D.S.Litton Koger or Mill tract.

Q.2.-- Please state what relation you are to the plaintiff D.S.Litton and to Alexander Litton deceased?

A.-- I am a brother to D.S.Litton and a son of Alexander Litton.

Obj.-- The same objection is made to the introduction of this witness as to the forgoing witness E.V.Litton.

B.H.Sewell.

Q.3.-- How long have you known the Koger or Mill tract?

A.-- I have known it all my life.

Q.4.-- Who has been in possession of it claiming to be the owner during the time you have known it?

A.-- At my very earliest recollection, Joseph Koger live upon it, since that time D.S.Litton has been in possession of it claiming to own it, and if any body else has ever set any claim to it I never heard it.

Q.5.-- How close did your father live to said land during his life time?

A.-- He lived with in one- fourth of a mile of it during his life time that is since I can remember.

Q.6.-- Did you ever hear your father Alexander Litton set up any claim to said tract of land or that D.S.Litton was indebted to him for it?

A.-- I never heard my father set up any claim to it, or to any thing

being due to him for said land.

Q.7.-- Please state if you know anything about your father giving or paying in the latter years of his life any money to D.S.Litton?

Obj.-- Objected to because immaterial.

B.H.Sewell.

A.-- He gave me \$100.00 and said that he had \$100.00 for each of his other children.

Q.8.-- Since your father's death, please state if you and your brothers and sisters, except the heirs of Harvey D.Litton deceased executed and delivered a deed to D.S.Litton for said tract of land?

Obj.- Objected to because the deed is the best evidence if made.

B.H.Sewell.

A.-- There was such a deed made and I signed and executed it and there were names of several of my brothers and sisters on it when it came to me.

And further this deponent saith not.

Wilson V. Litton

W.J.Yeary, another witness of lawful age being duly sworn deposes as follows:

Q.1-- Please state your age, residence and occupation.

A.-- I am 72 years old, am a farmer, I live with my son on the North Fork of Powells River but have always lived until the last few years on the Litton land, and within a quarter of a mile or such a matter of the Mill tract of land.

Q.2.-- Since you can remember who has been in possession of said Mill tract claiming to own it?

A.-- Ever since I knew said land D.S.Litton has been in possession of it claiming it, and I never heard anything else but that it was his.

Q.3.-- How many mills has been built on said land since you knew it and who built them or had them built?

A.-- Three. D.S.Litton built them or had them built.

Q.4.-- Did you ever hear Alexander Litton in his life time say anything about D.S.Litton owning said land, if so please state, what he

said?

A.-- I heard Alexander Litton say a good many times that he sold said tract of land to D.S.Litton. He either told me that he paid himself \$300.00 or \$400.00 to Mr. Kane for said land, or that D.S.Litton had paid him that sum for it, I am not certain as to which way he stated it and my recollection of the amount which he stated is not definite.

Q. 5.-- How long ago has it been since you first heard Alexander Litton say that he sold said tract of land to D.S.Litton?

A.-- It has been 45 or 50 years ago, I think.

Cross Examination.

X.Q.1.-- Did Mr. Alexander Litton at any time during his life have possession of this Koger or Mill tract of land?

A.-- At the time he bought it from Kane I don't know whether he took it in possession or not.

X.Q.2.-- At the time he purchased it from H.S.Kane did he have other tracts of land adjoining and if so state what tracts they were?

A.-- He did have other tracts adjoining, they were what as now known as the Willson and Elihu Litton tracts of land.

X.Q.3.-- At the time of this purchase by him from Kane state which of these tracts of land Alexander Litton lived upon, if upon any of them?

A.-- He lived on the Elihu Litton Farm.

X.Q.4.-- How long after his purchase from Kane before you heard him say anything about selling this land to D.S.Litton?

A.-- I can't tell exactly, it may have been ten or fifteen years.

And further this deponent saith not.

W. J. Kearney

D.S.Litton another witness of lawful age being duly sworn deposes ~~xxx~~ as follows:

Q.1.-- Please state your age, and relationship to Alexander Litton deceased?

A.-- I am 82 years old and a son of Alexander Litton deceased.

Obj.-- The introduction of this witness is objected to because Alexander Litton the other party to the alleged contract, which is the

subject of investigation in this case, is dead, and this witness therefore is incompetent.

Q.2.-- From whom did you purchase the Koger or Mill tract of land which is in dispute in this case, if you purchased it at all, state when you purchased it and what you agreed to pay for it, and further state whether or not you did pay for it?

obj.-- The foregoing question is objected to because it is leading and because the witness should state what agreement or contract if any there was and let the Court say whether there was any contract made or purchase of this land.

B.H.Sewell.

A.-- I purchased it from my father Alexander Litton, along about the year 1842. I agreed to pay him \$700.00 for said land and paid him down one horse at the price of \$75.00 and the remainder I paid as fast as I could, and my recollection is that after the horse was taken out of the price that the residue was divided into two payments. I paid these installments as they come due. I was married and moved on said land in 1845. I was married on the 4th of February 1845, and my wife and I moved on said land in a week and one day after we were married. I had said land paid for before I moved on it. I lived on said land two years or a little more, and then moved on to a tract of land owned by my wife in Yokum Station.

Q.3.-- How many mills have you built on said tract of land, state when you built them and the character of mills each one was?

A.-- I built three mills on it. The first one was a cheap concern, which was built the next fall after I was married. This mill washed away. I built another pretty good mill some four or five years after the first one and I did not get above the high water mark and it washed away. I built the third one in 1872. This was a good flouring mill, that cost me very nearly \$3000.00 including the dam which was built in 1871. This mill was built above high water mark and is still standing.

Q.4.-- Where did your father live at the time you built these three mills?

A.-- He lived right where E.V.Litton lived now, where he settled when

he moved from Russell County when I was a child a little over one year old, and which is about one fourth of a mile from said tract of land.

Q.5.-- Was the contract between you and your father reduced to writing, if so please state if you know, what become of said writing?

A.-- I executed my notes to him for the balance of the purchase money. He gave me no title bond or other writing that I have any recollection of. I lifted the notes, but I do not know what has become of them, I suppose I destroyed them as that was my habit with all the notes ~~xx~~ I lifted. At the time I purchased my father delivered possession to me which I regarded as the same as if he had given me a title bond.

Q.6.-- Do you know why your father did not convey said land to you by deed in his life time?

A.-- I suppose it was my carelessness, as my father said to me several times that I ought to get a deed prepared for the land.

Q. Who paid the taxes on that land from 1842 up to the present?

A.-- I paid them up to some three or four years ago when I deed it to my Daughter Mrs. Margaret Zion.

Q. 8.-- Since the death of your father did you have a deed prepared to be executed by your brothers and sisters for said land, if so please state how many of them executed the same.

A.-- I did have such a deed prepared which was executed and delivered by A.J.Litton, E.V.Litton, W.V.Litton, Rebecca Loyd and Mary Pennington which was all my living brothers and sisters. My brother Harvey D. Litton was at that time dead and his family lived in Texas. I ~~sent~~ had the deed sent by E.W.Pennington to Charles Litton to be executed by the heirs of the said Harvey D.Litton. The deed never was returned to, and something like a year ago Charles Litton wrote me that his house had been destroyed by fire and that the deed was burned up in ~~it~~.

And further this deponent said ~~that~~ not.

A. J. Litton

Rebecca Loyd another witness of lawful age being duly sworn deposes and says:

Q.1.-- Please state your age, and your relationship to D.S.Litton and to Alexander Litton deceased?

A.-- I am 76 years old, I am a sister of D.S.Litton and daughter of Alexander Litton deceased.

~~Q.2.--~~

Obj.-- The same objection is made to the introduction of this witness as to the introduction of E.V.Litton.

B.H.Sewell.

Q.2.-- Are you acquainted with the tract of land known as the Koger or Mill tract, if so how long have you known it?

A.-- I am acquainted with said tract of land and have known it since my earliest recollection. I was born and raised where my brother, E.V.Litton now lives, which is right close to said land.

Q.3.-- State anything you may know about your father selling said tract of land to your brother D.S.Litton?

✓ A.-- I know that my father sold said land to my brother D.S.Litton and that he paid him for it. My brother D.S.Litton moved on said land a few days after he was married and the land has been called his so far as I have any knowledge.

Q.4.-- Please state if you know what your brother paid to your father for said land and how he paid it?

A.-- I do not remember what D.S.Litton agreed to pay my father for said land but I do remember that he paid one horse towards it.

Q.5.-- Some few years ago and since your father's death, please state if you and your living brothers and sisters did not convey that tract of land to D.S.Litton by deed?

A.-- We did all sign one a few years ago, that is all of us who were here, which was all except the heirs of my brother Harvey who had died in Texas.

Q.6.-- Please state if you ever heard your father say at any time during his life that D.S.Litton had paid him in full for said land?

Obj.-- Objected to because leading.

B.H.Sewell.

A.-- I don't remember that I ever did, We always understood that my brother had bought it and paid for it and I never heard anything else or thought anything else.

And further this deponent saith not.

Rebecca Loyd
Morr

Virginia, Lee County, to-wit:

I, V.H.Kelley, a notary public in and for said county and state aforesaid do certify that the foregoing depositions of E.V.Litton, W.V.Litton, W.J.Yeary, D.S.Litton, and Bebecca Loyd, were taken sworn to and subscribed before me at the time and place and for the purpose mentioned in the caption. Given under my hand, this the 31st day of May 1900.

V. H. Kelly N.P.

Dickson S. Litton
vs. { Depositions

A. J. Litton et al.

N.P.
6 hours
\$4.50

with the making of the Court for the County of Lee

In the Clerk's office of the Circuit Court of the County of Lee.

Dickson S. Litton ----- Plaintiff,

Vs.

A. J. Litton and others, ----- Defendants,

In Chancery

This day Dickson S. Litton personally appeared before me, A. B. Munsey, Clerk of the said Court, and being duly sworn, made oath that Nancy C. Litton, Charles L. Litton, Samuel L. Litton, Perry Litton, Emmett Litton, William Litton, Judson Litton, Callie D. Couk and J. Morgan Couk her husband, Nannie B. _____ and _____ her husband, Emily J. Faungardner and James Faungardner, her husband defendants in said suit are not residents of the state of Virginia.

Given under my hand as Clerk of the said Court, this 15th day of August, 1899.

A. B. Munsey Clerk.

Dickson & Litton
} affidavit for
Order Pub

A. J. Litton et als

Filed August 15, 1899

A. B. Munsey clk

Virginia:

In the Clerk's Office of the Circuit Court of the County of Lee,
on the 15th day of August 1899

Dickson S. Litton ----- Plaintiff,

against

A. J. Litton and others ----- Defendants.

The object of this suit is to extract from the heirs at law of Alexander Litton, deceased, the legal title to the tract of land in the bill and proceedings mentioned and vest the same in the said Dickson S. Litton. Said tract of land is situated in Lee County Virginia in the Rocky Station Magisterial district adjoining the lands of Elihu V. Litton and others, containing a bount 200 acres and known as the Koger mill tract, which said tract of land was purchased by the said Dickson S. Litton from his father Alexander Litton in his life time, but was never conveyed, and an affidavit having been made and filed that the defendants Nancy C. Litton, Charles L. Litton, Samuel L. Litton, Perry Litton, Emmett Litton, William Litton, Judson Litton, Callie D. Couk, nee Litton and J. Morgan Couk her husband, Nannie B. _____ nee Litton and _____ her husband, Emily J. Baumgardner and James Baumgardner her husband, are not residents of the state of Virginia, it is ordered that they do appear here within fifteen days after due publication hereof, and do what may be necessary to protect their interest in this suit. And it is further ordered that a copy hereof be published once a week for four weeks in the "Southwest Virginian" a weekly news paper published at Jonesville, in Lee County Virginia and that a copy be posted at the front door of the Courthouse of this County on the first day of the next term of the County Court.

A Copy- Teste;

C. T. Duncanson

P. Q.

A. B. Mursey Clerk.

Dickson, S. Litton
Order of Publication
A. J. Litton et als
Filed Aug 15th 1899
A. B. Munsey clk

Virginia Lee County, To wit
I A. B. Munsey Clerk of
the Circuit Court for Lee
County Va do hereby Certify
that I posted a copy of the
within Order of publication
at the front door of the Court
house of Lee County on the
first of the September
term of the County Court
of said County, this the
19th day of September 1899
A. B. Munsey Clerk

TO Charles L.Litton, Samuel L.Litton, Perry Litton, Callie D.Couk and J.Motgan Cour her husband, Emmett L.Litton, Nannie B. _____ formerly Litton, William Litton and Judson Litton, Bernice Russell, Kitty Russell, Bernard Russell and Perl D.Russell: You will please take notice that on Friday the 23rd day of February, 1900, at the residence of M.F.Litton I will proceed to take the depositions of Rebecca Loyd, A.J.Litton , A.J.Yeary and others, to be read as evidence in my behalf in a chancery cause now pending in the the Circuit Court of Lee County in which I am plaintiff and you and others are defendants. If from any cause said depositions are not completed on that day the taking thereof will be continued from day to day, from time to time and from place to place until finished. You can attend and cross examine if you desire.

February 21st, 1900.

Dickson S. Litton
By Counsel

D. L. Litton
vs. { notice to take
depositions.
A. J. Litton et al.

I accept legal service
of within notice.

Geo. P. Eridline, Esq.
Att. Litton for infant
dependants.

Executed by delivering a true
copy of this within notice
to W. B. H. Swell, attorney for
Chas. G. Litton, Samuel
Litton, Perry Litton, Callie D.
Cook and J. Morgan Cook
her husband, Edmund L.
Litton and Annie B. —
formerly Litton who are
now residents of the State
of Virginia.

This Feb. 21st, 1900

W. J. Milcham.

S. L. C.

The Commonwealth of Virginia:

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, that you summon

A. J. Litton, Wilson V Litton, Elihu V Litton, Rebecca Loyd, Nancy Litton, Charles L Litton, Samuel L Litton, Perry Litton, Emmett Litton, William Litton, Judson Litton, Lollie D Cook nee Litton & J Morgan Cook her husband, Nannie B nee Litton & her husband, Alex L Russell, Dickson H. Russell, Her H Russell, Lehas, A. Russell, Emily J Baumgardner, & James Baumgardner her husband, Elizabeth Baumgardner nee Russell & F. P. Baumgardner her husband, Berrice Russell, Kitty Russell, Bernard Russell & Pearl D Russell Children and heirs at law of H. J. Russell deed, and Eva Russell widow of the said H. J. Russell

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said Court on the 1st Monday in September, 1899, to answer a bill in chancery, exhibited against them in our said court by

Dickson S Litton

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the 15th day of August, 1899, and in the 124th year of the Commonwealth.

A. B. Munsey Clerk

~~*A. B. Munsey*~~
~~*Dickson S Litton*~~

D. S. Litton

vs.

SUBPOENA
IN
CHANCERY.

A. J. Litton et als

C. L. Duncan p. q

To 1st September Rules.

Circuit Court.

Executed Sept 2nd by deliver
an attested office copy of the
within & pa in Chas to A. J.
Litton, Elizabeth Baumgardner
ner F. P. Baumgardner and
Rebecca Lloyd.
R. B. Livesay Ds
for W. J. Milham & C

The Commonwealth of Virginia:

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, that you summon A. J. Litton, Wilson V. Litton, Elihue V. Litton, Rebecca Loyd, Nancy L. Litton, Charles L. Litton, Samuel L. Litton, Perry Litton, Emmett Litton, William Litton, Judson Litton, Callie D. Leuk, nee Litton & J. Morgan Leuk, her husband, Nannie B. _____ nee Litton & _____ her husband, Alex L. Russell, Dickson H. Russell, Geo. M. Russell, Charles A. Russell, Emily J. Baumgardner & James Baumgardner, her husband, Elizabeth Baumgardner, nee Russell & F. P. Baumgardner, her husband, Bernice Russell, Kitty Russell, Bernard Russell and Pearl D. Russell, Children and heirs at law of D. J. Russell, deed and Eva Russell widow of the said D. J. Russell

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said Court on the 1st Monday in September, 1899, to answer a bill in chancery, exhibited against them in our said court by

Dickson S. Litton

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the 15th day of August, 1899, and in the 124th year of the Commonwealth.

A. B. Munsey Clerk

Serve copies on
 A. J. Litton ✓
 Wilson V Litton
 Elihue V Litton
 Rebecca Lloyd
 Alex L Russell X
 Dickson & Russell X
 Geo. W. Russell X
 Chas A Russell X
 Elizabeth Baumgardner
 F. P. Baumgardner
 Bernice Russell
 Kitty Russell
 Bernard Russell +
 Pearl & Russell +
 + Eva Russell X

Dickson & Litton

vs. }

SUBPOENA
 IN
 CHANCERY.

A. J. Litton et als

C. T. Duncan p. q

To 1st September Rules.

Circuit Court.

Executed Sept. 1st 1899 by delivering an attested office copies of the within paper in
 Chancery to Wilson V Litton, Elihue V Litton, Alex L Russell, Dickson & Russell,
 Geo W Russell, Chas A Russell, Bernice Russell, Kitty Russell, Bernard Russell,
 Pearl & Russell and Eva Russell.

W. J. Milham S.C.

**CERTIFICATE OF
ORDER OF PUBLICATION.**

I, A. M. Goins, Editor of the **SOUTH-
WEST VIRGINIAN**, a weekly newspa-
per published at Jonesville, Lee County,
Va., do hereby certify that the annex-
ed notice was published in said paper
once a week for four successive weeks,
commencing on the 24th day of

Aug, 1899

A. M. Goins, EDITOR.

FEE, \$6.00

VIRGINIA—In the Clerk's Office of the
Circuit Court of the County of Lee, on the
15th day of August, 1899.

DICKSON S. LITTON, Plaintiff.

VS. { In Chancery.

A. J. LITTON, et als, Defendants.

The object of this suit is to extract from
the heirs at law of Alexander Litton, de-
ceased, the legal title to the tract of land
in the bill and proceedings mentioned and
vest the same in the said Dickson S. Litton.
Said tract of land is situated in Lee county,
Virginia, in the Rocky Station Magisterial
District, adjoining the lands of Elihu V. Litton and others, containing about
200 acres and known as the Kogar mill
tract, whice said tract of land was pur-
chased by the said Dickson S. Litton from
his father Alexander Litton in his life-
time, but was never conveyed; and an af-
fidavit having been made and filed that
the defendants Nancy C. Litton, Charles
L. Litton, Samuel L. Litton, Perry Litton,
Emmet Litton, William Litton, Judson
Litton, Callie D. Couk, nee Litton, and J.
Morgan Couk, her husband, Nannie B.

—, nee Litton and —
her husband, Emily J. Baumgardner and
James Baumgardner, her husband, are not
residents of the State of Virginia, it is or-
dered that they do appear here within fif-
teen days after due publication hereof, and
do what may be necessary to protect their
interest in this suit. And it is further or-
dered that a copy hereof be published once
a week for four weeks in the **SOUTHWEST
VIRGINIAN**, a weekly newspaper published
at Jonesville, in Lee County, Virginia, and
that a copy be posted at the front door of
the Courthouse of this County on the first
day of the next term of the County Court.

A copy—Teste:

A. B. MUNSEY, Clerk.

C. T. DUNCAN, p. q. aug 24-99-41-41's

ORDER OF PUBLICATION.

Dickson S. Litton

VS.

IN CHANCERY.

H. J. Litton et al.

FEE \$6⁰⁰